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ORIGINAL

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MAY 6 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 6, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte: CC Docket No. 98-121

Dear Ms. Salas:

On May 6, 1999, I submitted the attached letter and written ex parte to Claudia Pabo of the FCC's Policy Division.

In accordance with the Commission's rules, two copies of this notice are being filed.

Sincerely,

Karen Reidy

Karen Reidy

Attachments

cc: Claudia Pabo

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May 6, 1999

VIA HAND DELIVERY

Ms. Claudia Pabo
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte: Submission in CC Docket No. 98-121

Dear Claudia:

Per your request, attached is MCI WorldCom's comments on BellSouth's Proposal for Self Effectuating Enforcement Measures ex parte dated April 8, 1999.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Karen Reidy". The signature is fluid and cursive, with the first name "Karen" and last name "Reidy" clearly visible.

Karen Reidy

Attachment

MCI WORLDCOM'S RESPONSE TO BELL SOUTH'S PERFORMANCE REMEDY PROPOSAL

MCI WORLDCOM outlines below the primary deficiencies in the performance remedy proposal described in BellSouth's April 8, 1999 ex parte filing.

PERFORMANCE MECHANISMS MUST BE IMPLEMENTED AND TESTED PRIOR TO 271 ENTRY

BellSouth states that "no enforcement mechanism will be put in place until BellSouth receives 271 approval from the FCC for a given state." BellSouth once again has it backwards: 271 relief comes after its performance in opening local markets has been tested and proven, not before. Performance remedies are vital not only to prevent "backsliding" after local markets have been opened, but also to enforce BellSouth's obligations under both sections 251 and 271 to open its markets in the first instance. That BellSouth is unwilling to comply fully with its nondiscrimination obligations absent a reward of 271 entry confirms the importance of implementing adequate enforcement mechanisms today; BellSouth will not even attempt to open its local market unless it is in its economic interest to do so.

It is also critical to implement and fully audit the data gathering, reporting, and remedy processes prior to 271 entry, as BellSouth has no incentive to self-report poor performance. For example, the KPMG test proved valuable in highlighting that Bell Atlantic does not document the process or provide appropriate definitions for calculating metrics in its monthly carrier reports. The test also revealed that some metrics were being incorrectly calculated and reported by Bell Atlantic.

**THE PROPOSED REMEDIES ARE ABSURDLY SMALL,
AND WILL BECOME THE ONLY RATIONAL CHOICE
FOR BELL SOUTH'S BOTTOM LINE**

An incumbent LEC's incentive to discriminate against competitors in order to protect its market share is not disputed. Nor is there serious debate that the level of remedy must therefore be of sufficient financial magnitude to deter discrimination and make compliance with competitors the rational economic choice for BellSouth. The level of remedies BellSouth has proposed do not begin to counter its incentive to protect its local market. MCI WorldCom is not aware of any ILEC that has volunteered to abide by a remedy proposal that has sufficient teeth to modify the ILEC's conduct, and BellSouth is no exception. The magnitude of remedies is simply not an issue that can be solved by a proposal from the party that is responsible for paying the remedies. This Commission or state commissions must establish a remedy structure that prevents ILECs from writing off minimal payments for unreasonable and discriminatory service as a justifiable investment to retain market share.

An effective remedy structure must reflect the magnitude of deviation from the required standard (how poor the service is), the duration of the period in which substandard or nonparity service is received (how long the poor service persists), and the number of violations (how many functions and services are poorly delivered). BellSouth's proposed remedies do not increase with the magnitude or duration of the failed parity result. For example, the effect of continuing discrimination in loop installations will be devastating to a CLEC's business. However, with only the price of the NRC at risk for all missed orders, BellSouth will have every incentive to continue to miss due dates. An occasional partial offset of a recurring or non-recurring charge does begin to make reasonable and nondiscriminatory service the rational economic choice for BellSouth.

Indeed, BellSouth's proposal gives it an additional incentive to thwart CLEC market growth. If BellSouth's poor performance prevents CLECs from growing and acquiring additional customers, the result will be reduced payments. This is because remedies are determined based on the number of lines missing the interval. By providing poor service to a CLEC, BellSouth limits the number of customers/lines CLECs can acquire, leading to a reduced payment.

BELLSOUTH CONTROLS THE REMEDY TRIGGER

BellSouth illogically argues that higher remedies would provide an incentive for CLECs to prefer the remedy over quality service. Leaving aside the absurdity of the notion that a business would develop a strategy to fail in the market, lose customer goodwill, and subject itself to regulatory penalties and lawsuits for intentionally degrading service, MCI WorldCom and other CLECs have agreed to exclude from measurements any CLEC-caused problems that affect ILEC performance. Therefore, CLECs do not have the ability to make BellSouth fail the parity test. BellSouth, not the CLECs, controls whether service at parity is provided and, thus, the amount of the remedy payment (if any), each month.

CLECs would not have made the network investments, gone through the costs and pains of developing OSS interfaces, and obtained all necessary certifications, franchises and tariff approvals in the hopes that they might make some money from remedy payments. CLECs' businesses and reputations are at stake. As BellSouth well knows, penalty payments will cease if BellSouth's poor performance to CLECs results in the demise of the CLECs' business.

BELLSOUTH'S PROPOSAL DOES NOT COVER THE CRITICAL MEASURES

BellSouth's proposal includes only a small subset of functions critical to a CLEC's ability to compete in the local market. For example, BellSouth's proposal does not measure intervals that have critical customer impact, such as mean time to restore and the return of Firm Order Confirmations (FOCs). The first question customers often ask is when will they have service. FOCs enable CLECs to provide their customers with this valuable piece of information. Mean time to restore measures the length of time a customer suffers from an outage. Lengthy repair intervals will quickly drive customers away from CLECs.

Also, BellSouth's supposedly outcome focused approach misses many customer-impacting problems. For example, the proposal excludes from the "percentage of missed installations" orders missed when a CLEC is forced to cancel or supplement an order due to BellSouth placing the order in jeopardy or holding the order for an extended time. But most importantly, BellSouth excludes many of the process measurements that enable CLECs to gain customers to be impacted in the first place.

BellSouth's previous ex parte filing (dated March 11, 1999) essentially concedes that its plan applies remedies to fewer measures than the number in any of the other BOC plans under consideration. There are numerous additional examples of excluded measures the Commission has already recognized as important in its Notice of Proposed Rulemaking and its prior 271 decisions. Attached is a list of some additional measures critical to local market entry. MCI WorldCom is prepared to discuss the importance of these measures with the Commission.

Finally, limiting remedies solely to measures viewed today as "critical" ignores the fact that other measures become critical when they are repeatedly missed.

BELLSOUTH'S PROPOSAL DOES NOT PROVIDE FOR PROPER DISAGGREGATION

It is essential that BellSouth's reporting occur at sufficiently disaggregated levels that enable CLECs and regulators to fairly compare BellSouth's retail performance to its wholesale performance. Otherwise, BellSouth will be able to manipulate its performance reports by misleadingly grouping together different types of products, orders, and geographic areas.

The disaggregation in BellSouth's current proposal is even less than the disaggregation in BellSouth's own "Service Quality Measurement" proposal submitted in Louisiana.

BellSouth's proposal does not provide for proper disaggregation by product or even within measurement categories.

BellSouth's proposal does not disaggregate by UNE or resold service. This results in an aggregation of products that have a different degree of competitive impact.

- For example, the report does not separate trunks from other UNEs for the measurements of Percent Missed Due Dates, Installation Quality or Repeat Repair Appointments. Missed installation of trunk groups affects the CLEC's ability to enter a market. Yet by BellSouth's improper aggregation, the same remedy would apply to missed trunk installations as to any other UNE that may only affect one customer due date – even assuming the remedy plan included trunks for each of these categories.

BellSouth's disaggregation within measurement categories is also inadequate. For example, BellSouth could over-engineer some

trunk groups (put DS3s where they only need a DS1) and never reveal poor performance under its proposed blocking metric.

BellSouth's proposal does not disaggregate data by CLEC.

BellSouth's proposal results in remedies to CLECs only if the results show a material discrimination to CLECs in the aggregate. This is especially a concern with BellSouth since it has a CLEC affiliate approved for local service in almost every state within its region. Aggregation will allow it to mask superior service being provided to its affiliate, and use that discrimination to offset the poor service provided to unaffiliated CLECs. Equally important, a CLEC with a small volume of orders (whether because it is a comparatively small CLEC or because of a newly initiated business plan) could be discriminated against without remedies when its performance data is aggregated with other CLECs' results. In addition, since BellSouth is privy to CLEC's local market activity, it could easily target a particular CLEC at a critical time in its market development. It can then use its performance for other CLECs to average out targeted poor performance to create a result of parity in the aggregate.

This problem would not even be remedied in individual interconnection agreements, because BST proposes putting the CLEC aggregate plan in its interconnection agreements.

BellSouth's proposal does not disaggregate data by geographic region.

BellSouth's statewide retail performance may include longer intervals for rural areas that mask disparity in its intervals for CLECs in urban areas.

Even the Louisiana PSC staff recommended reporting by Metropolitan Statistical Areas for provisioning, maintenance and

repair, trunk group performance and collocation where rural areas could make a difference in reporting. The staff noted that "...a statewide average of BellSouth performance could be misleading."

BELLSOUTH'S PROPOSED STATISCAL TESTING WOULD NOT PROVIDE THE PROPER COMPARISON TO DETERMINE PARITY

Parity cannot be properly determined without an appropriate statistical methodology. BellSouth claims there is no consensus on a single test. The lack of consensus appears to be caused by BellSouth. The Local Competition Users Group's (LCUG's) "modified z-test" has been accepted by both BOC and CLEC participants in several state performance measurement proceedings, including New York, California and Texas, as an appropriate test for evaluating parity on a measurement-by-measurement basis. The only state that has adopted something other than the modified z-test is Massachusetts, where no statistical test is used; any difference in performance invokes a self-executing remedy.

The methodology BellSouth proposes randomly aggregates the wire centers together, assesses the spread of data against the mean instead of a distribution, assumes that variation of performance is random rather than systematic bias, allows positive performance to cancel out negative performance, and assumes that the measures are dependent. All of these deficiencies enable BellSouth to hide serious disparities in its treatment of CLECs versus its own retail customers.

BELLSOUTH'S PROPOSAL FAILS TO ESTABLISH PERFORMANCE STANDARDS

BellSouth must provide CLECs nondiscriminatory and *reasonable* access to its network. Therefore, performance standards or benchmark are needed, even in situations where a retail analogue exists. Standards establish a particular level or quality of service to be provided CLECs, while parity may vary dramatically from month to month. Absent standards governing when it will receive “raw materials” from its main supplier, a new entrant cannot plan its internal operations or advise its own customers and potential customers when they can expect to receive service. Performance standards ensure competitors are provided consistent and satisfactory levels of performance, a necessary factor in receiving a meaningful opportunity to compete.

BELLSOUTH PROTESTS TOO MUCH ABOUT THE COST OF LCUG’S PROPOSAL

The Commission has already recognized the importance of most of the LCUG measures in its NPRM. In fact, the New York, Texas, and California State proceedings have added measures that go beyond LCUG’s minimum list.

Last fall, the Louisiana PSC staff also discounted BellSouth’s concern about the cost of implementing LCUG measurements and the associated disaggregation. Responding to BellSouth’s unsubstantiated claim that it would cost an additional \$15,000,000 on a regional level to implement the LCUG 6.1 proposals, the LA PSC put this amount in perspective

The BellSouth nine-state region serves approximately 22,000,000 customers. If the \$15,000,000 were amortized over a five-year period, which is consistent with the depreciation time period for computers and software, and if BellSouth's customers were required to pay for the

expenditures, it would amount to a little over one cent per month, or \$.60 for the five-year period.

In any event, BellSouth's cost claims are certainly exaggerated. The LCUG measurements are similar to many internal measurements ILECs already conduct to monitor their own business operations. Sprint (as an ILEC) is spending far less (\$5 million) to implement a greater number of metrics in California. It states that the metrics also help it spot trouble areas and improve its own performance for retail customers. Thus, any cost of adding new metrics provides benefits to the ILEC in improving its own processes.

SELF-EXECUTING REMEDIES DO NOT NEGATE THE NEED FOR THIRD PARTY OSS TESTING

BellSouth, in a previous ex parte regarding performance monitoring (dated March 11, 1999), offers its weak remedy plan as an alternative to third-party OSS testing. The existence of even strong self-executing performance remedies would not, however, negate the need for third party testing of all BellSouth's interfaces, stress test performance, change control management, accurate and adequate documentation, help-desk support capabilities and other critical OSS requirements.

New entrants must have assurance that an ILEC's support systems are capable of working, under realistic market conditions, before deciding to enter a market or place large volumes of orders. Companies such as MCI WorldCom are not going to risk entering, or ramping up market entry, on the hope that they will receive credits after their market entry fails and their reputation as a new provider is tainted.

SUMMARY

This Commission has emphasized the importance of self-executing remedies in ensuring compliance with performance standards, recognizing that absent adequate enforcement mechanisms, local exchange competition could be significantly delayed by lengthy legal proceedings. Clearly, BellSouth has a powerful incentive to keep competitors out of its lucrative local market. Once 271 approval is obtained, the only protection CLECs have is a comprehensive, self-executing remedy plan with a strong bite. BellSouth's proposal is grossly inadequate.

| LCUG Measurement Designation: | | Measurements To Which Remedies Should Apply | BST Measurements for Which Remedies Are Proposed |
|--------------------------------|--|---|--|
| Ordering and Provisioning (OP) | | | |
| OP-1 | Average Completion Interval | | |
| OP-2 | % Orders Completed on Time | | %Service Order Due Dates Missed |
| OP-3 | Average Offered Interval | | |
| OP-4 | % Order Accuracy | | |
| OP-5 | % Mechanized Order Flow Through | | |
| OP-6 | % Orders Rejected ¹ | | |
| OP-7 | Average Submissions Per Order | | |
| OP-8 | Reject Interval | | |
| OP-9 | FOC Interval | | |
| OP-10 | Jeopardy Interval | | |
| OP-11 | Completion Notice Interval | | |
| OP-12 | % Completions/Attempts without Notice or with Less Than 24 Hours Notice. | | |
| OP-13 | % Jeopardies | | |
| OP-14 | Average Coordinated Conversion Interval | | |
| OP-15 | % Service Loss from Early Cuts ² | | |
| OP-16 | % Service Loss from Late Cuts | | |
| OP-17 | Held Order Interval | | |
| OP-18 | % Orders Held ≥ 90 Days ³ | | |
| OP-19 | % Orders Held ≥ 15 Days | | |
| Maintenance and Repair (MR) | | | |
| MR-1 | Mean Time to Restore | | |
| MR-2 | Mean Jeopardy Interval for Maintenance and Trouble Handling | | |
| MR-3 | Repeat Trouble Rate | | %Repeat ed Report Rate |
| MR-4 | Trouble Rate | | |
| MR-5 | % Troubles Within 30 Days of Install and Other Order Activity | | % Troubles Within 4 Days |
| MR-6 | % Customer Troubles Resolved Within Estimate | | %Missed Repair Appointments |
| General (GE) | | | |
| GE-1 | % System Availability | | OSS Availability |
| GE-2 | Mean Time to Answer Calls | | |

¹ Diagnostic, but remedies may apply if CLEC show's high percentage related to ILEC system, business rule change or other issues.

² Linked to metric below. One remedy may apply to total.

³ OP-18 and OP-19 describe magnitude issues related to OP-17 failures.

| LCUG Measurement Designation: | Measurements To Which Remedies Should Apply | BST Measurements for Which Remedies Are Proposed |
|--|---|---|
| GE-3 | Call Abandonment Rate | |
| GE-4 | Average Response Interval | |
| Billing (BI) | | |
| BI-1 | Mean Time to Provide Recorded Usage Records | Usage Data Delivery Timeliness |
| BI-2 | Mean Time to Deliver Invoices | Invoice Timeliness |
| BI-3 | % Invoice Accuracy | |
| BI-4 | % Usage Accuracy | |
| Operator Services/Directory Assistance & Listings (OS, DA and DL) | | |
| OS/DA-1 | Mean Time To Answer | |
| DL-1 | Average Time Allotted To Proof Listing Updates Before Publication | |
| Network Performance (NP) | | |
| NP-1 | % Call Completion | %Trunk Blocking |
| NP-2 | Meantime To Notify CLEC | |
| NP-3 | Network Performance Parameters | |
| Collocation Provisioning (CP) | | |
| CP-1 | Meantime To Respond To Collocation Request | |
| CP-2 | Meantime To Provide Collocation Arrangement | |
| CP-3 | % Due Dates Missed | %Due Date Missed |
| Database Updates (DU) | | |
| DU-1 | Average Update Interval (911, DA/DL, NXX by LERG effective date, LIDB measured separately.) | |
| DU-2 | % Update Accuracy (all databases above measured separately) | |
| Interconnect / Unbundled Elements and Combos (IUE) | | |
| IUE-1 | Function Availability (EEL, loop, mux, IOF) | |
| IUE-2 | Timeliness of Element Performance (EEL-loop, IOF, mux coordinated delivery.) | |
| State Collaborative METRICS | | |
| | % On Time Change Management Notice (NY/PA/NJ) | |
| | Response Time on Right of Way Requests (TX) | |
| | Bona Fide Request (TX) | |
| | % Completed In Standard Interval (CA/PA/NJ) | |

| LCUG Measurement Designation: | Measurements To Which Remedies Should Apply | BST Measurements for Which Remedies Are Proposed |
|--|---|---|
| | Notice of OSS Outages (CA, PA/NJ) | |
| | <i>Average Delay Days for NXX loading and testing (TX')</i> ⁵ | |
| | <i>MTTR NXX Loading Errors</i> ⁶ | |
| | % of Time 10-digit trigger is applied prior to the LNP Order DueDate (TX) | |
| | <i>Percent of I-Reports for LNP in X' days</i> | |
| | <i>Provisioning Troubles Before Installation (CA)</i> | |

⁴ Magnitude measure for DU-1 NXX loading, timeliness

⁵ Magnitude measure for DU-2 NXX loading accuracy

⁶ Level of disaggregation for MTTR.

⁷ This and following measurement may be linked or subset of Troubles Within #0 Days of Install or metric Order Activity